



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 8818352

Date: AUG. 26, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an entrepreneur, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

## I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).<sup>1</sup> *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>2</sup>, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (NYSDOT).

<sup>2</sup> See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>3</sup>

## II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the Dhanasar analytical framework.

Regarding his claim of eligibility under Dhanasar's first prong, the Petitioner indicated that he seeks to continue his work as an entrepreneur in the fast food restaurant industry. He asserted that his proposed endeavor is focused "on establishing and expanding my fast food business in southern Florida." The Petitioner further stated:

[S]ince early 2017, I have been co-owner of [redacted] through which, in 2018, I opened [redacted] a gourmet fast food deli outlet specialized in tasty, signature [redacted] as well as a selection of other food, including pizzas, and sandwiches. This establishment, in [redacted] Florida, has onsite capacity to prepare and serve all food needed for the eat-in deli and its takeaway service, as well as to prepare [redacted] on a larger scale for wholesale to other local businesses in the area such as coffee shops, caterers, and gas stations.

In addition, the Petitioner noted that he plans "to invest \$120,000 of my own funds immediately" and that he has "secured an additional \$120,000 from my investor partner." He explained that "[t]his first phase of direct foreign investment thus totals \$240,000, more than half of which are my own personal funds." The Petitioner further indicated that the next phase of his proposed endeavor involves opening "two additional fast food restaurants" and "a new [redacted] factory." He also contended that his undertaking stands to "provide jobs for an estimated half-dozen local people," contribute "to the local economy through creating direct and indirect jobs in the growing fast food industry," and "generate revenue from the income taxes paid."

The Petitioner presented the "Articles of Organization/Operation Agreement" for [redacted]. This agreement sets forth an initial contribution of \$500 each for the Petitioner and his partner [redacted] [redacted] representing a shared 50% ownership interest in their company. The record also includes a "First Amendment to [redacted] Operating Agreement" dated March 22, 2018. This amendment states that each partner "will make an additional capital contribution to the company in the amount of U.S. \$100,000" by December 31, 2018. Additionally, the Petitioner provided [redacted] [redacted]'s membership certificates for both partners, a July 2017 letter from the Internal Revenue service assigning the company an Employer Identification Number, a certificate indicating that [redacted]

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<sup>3</sup> See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[redacted] was registered as a fictitious name with the Florida Department of State in February 2018, and the “[redacted] Business Plan” for 2018 – 2022.<sup>4</sup>

The record includes information about community food services in the United States, U.S. bread production, fast food restaurants in the United States, the entrepreneurial legacy of immigrants and their children, the economic contribution of immigrant-launched businesses, and entrepreneurship as a driver of U.S. economic growth. In addition, the Petitioner provided articles discussing immigrants’ contribution to U.S. entrepreneurship, the economic and fiscal consequences of immigration, immigrant entrepreneurs’ positive impact on the U.S. economy, and the value of entrepreneurs to the global economy. The record therefore supports the Director’s determination that the Petitioner’s proposed work as an entrepreneur in the fast food industry has substantial merit.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

The Petitioner argues on appeal that he is contributing to the national economy through vertical investment, ripple economic effects from his business, and hiring U.S. workers. He claims that his proposed entrepreneurial activities “will expand to region-wide economic production and employment opportunities.” The Petitioner further maintains that “not only will he support his U.S. company’s activities, but he will also continue to help enhance the sales of other local businesses through the wholesale of his highly demanded products to sell in their respective cafes, specialized food shops and quick service outlets, such as gas stations.” In addition, he asserts that “[i]ncreased sales will create more demand for his products, which will be met by employment of more U.S. workers for their production, and this will generate additional tax revenue and overall benefit for both the local and wider U.S. economy.” Furthermore, the Petitioner contends that his proposed endeavor stands to affect the national economy by “[o]ffering economic convenience and agility,” “[d]riving financial productivity for U.S. companies that wish to expand their offerings of quality baked goods on the local market,” and “prioritizing the domestic job market.”

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work. Although the Petitioner’s statements reflect his intention to operate and expand his fast food business, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not

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<sup>4</sup> This business plan includes market analyses, information about the company and its products, financial forecasts and projections, and a description of company management and personnel. Regarding future staffing, the Petitioner’s business plan anticipates that [redacted] will have seven employees in year one, eight employees in year two, and nine employees in year three. In addition, his plan offers sales projections of \$602,937 in year one, \$795,000 in year two, and \$1,054,000 in year three. The Petitioner, however, does not adequately explain how these sales forecasts were calculated.

impact his field more broadly. Id. at 893. Here, we find the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his business and its customers to impact or the U.S. economy or food service industry more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, he has not shown that his company's future staffing levels, business activity, and related tax revenue stand to provide substantial economic benefits in Florida or the United States. While the sales forecast for [REDACTED] indicates that the company has growth potential, it does not demonstrate that benefits to the regional or national economy resulting from the Petitioner's undertaking would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. at 890. In addition, although the Petitioner asserts that his company will hire U.S. employees, he has not offered sufficient evidence that the area where [REDACTED] operates is economically depressed, that he would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels or foreign direct investment. Accordingly, the Petitioner's proposed work does not meet the first prong of the Dhanasar framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the Dhanasar precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in Dhanasar, therefore, would serve no meaningful purpose.

### III. CONCLUSION

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER:     The appeal is dismissed.